IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1459 of 2007

S.Pattu Durai .. Petitioner

Vs

1. The Secretary to Government,
   Home, Prohibition and
   Excise Department, Fort St.
   George, Chennai-600 009.

2. The District Collector and
   District Magistrate,
   Kancheepuram District,
   Kancheepuram. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.K.Gandhi Kumar
For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, brother of the detenu by name Alagudurai @ Alagu, who was incarcerated at Central Prison, Chennai, by order dated 7.9.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda, seeks a writ of Habeas Corpus to call for the records in connection with the said order of detention made in BDFGISSV No.58/2007, to quash the same and to direct the respondents to produce the detenu before this Court and set him at liberty.

2.1. The impugned order of detention was passed based on the ground case said to have taken place on 15.8.2007 at 10.45 hours,

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complaint of which was given by one Muthukumarasamy. According to the complainant, when he was going to a tea shop near Palur Railway Station, the detenu along with another waylaid him and at the knife point, demanded money and they also tried to stab him when he refused to give money and he escaped and raised alarm. On hearing the alarm, the people nearby came to his rescue and the accused persons threatened them with knife and out of fear, the public scattered in all directions, resulting in dislocation of traffic and panic situation, taking advantage of which, the accused persons escaped from the spot with the robbed amount. Based on the complaint, a case in Crime No.144 of 2007 was registered against the accused for offences under Sections 341, 294(b), 506(ii), 307, 392 IPC and it was taken up for investigation, during which, the detenu was arrested and later, produced before Judicial Magistrate No.I, Chengalpattu.

2.2. On being satisfied that the detenu had acted in a manner prejudicial to the maintenance of public order, after taking into consideration one adverse case on the file of same police station in Crime No.130/07 for offence under Section 394 IPC, altered to 397 IPC, the impugned detention order was clamped on the detenu.

3. The learned counsel for the petitioner challenges the impugned order of detention on the ground of non application of mind on the part of the detaining authority, as the detaining authority had not taken note of the fact that the specific plea raised by the petitioner in his representation dated 3.10.2007 that the detenu was taken by the police on 13.8.2007 and not on 15.8.2007, as mentioned in the detention order, was not considered in the rejection order dated 17.10.2007.

4. We have perused the entire materials placed before us. Even though in the grounds of detention, it was stated that the detenu was arrested on 15.8.2007 with respect to the ground case, in the representation made by the petitioner dated 3.10.2007, he had specifically stated that the detenu was taken on 13.8.2007 by the Police and was kept under their custody and thereafter, a false case was foisted against him. However, the second respondent, while passing the order of rejection dated 17.10.2007 rejecting the representation of the petitioner dated 3.10.2007, had not considered the contention raised by the learned counsel as to the arrest of the detenu.

5. We are, therefore, satisfied that the detaining authority had not taken note of the above fact, which shows the non application of mind on the part of the detaining authority. Accordingly, the order of detention is vitiated and the same is set aside. The detenu

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is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sra

To

1. The Secretary to Government
   Prohibition & Excise Department
   Secretariat, Chennai 9.

2. The District Collector and
   District Magistrate,
   Kancheepuram District,
   Kancheepuram.

3. The Joint Secretary to Government,
   Public [L & O] Department,
   Fort St. George, Chennai 9.

4. The Superintendent
   Central Prison, Chennai.

5. The Public Prosecutor
   High Court, Madras.

HCP No.1459 of 2007

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